Depucate Ougenore

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03 Cr. 12 (KTD)

ORDER

KEVIN THOMAS DUFFY, U.S.D.J.:

Following a jury trial Joromi Bazuaye was convicted of:

(1) multiple counts of bank fraud; and (2) producing, using, or

trafficking in a counterfeit access device. On November 5, 2004,

I sentenced Bazuaye to, principally, thirty-three months

imprisonment and five years supervised release. Bazuaye objected

to the sentence, arguing that the mandatory application of the

Federal Sentencing Guidelines to his case was unconstitutional.

Bazuaye appealed and filed a motion in the Court of Appeals seeking a remand of the case for resentencing. On June 27, 2005, the Court of Appeals, on consent of the government and pursuant to <u>United States v. Booker</u>, <u>U.S.</u>, 125 S. Ct. 738 (2005), and <u>United States v. Fagans</u>, 406 F.3d 138 (2d Cir. 2005), issued a mandate stating that "the case is remanded to the district court with instructions to vacate the sentence and resentence Appellant in conformity with <u>Booker</u>." Accordingly, Bazuaye's resentencing is hereby set for 10:00 A.M., September 27, 2005.

Finally, Bazuaye's <u>pro</u> <u>se</u> motion seeking "an order granting Release [sic] pending appeal and/or resentencing" is DENIED.

SO ORDERED

Dated:

New York, N.Y.

August 10, 2005

KEVIN THOMAS DUFFY,

Copies Mailed to Counsel of Record 3/10/05